

## 301 CMR 5.00: SELF-HELP AND URBAN SELF-HELP PROGRAMS

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#### 5.01: Authority

301 CMR 5.00 is promulgated pursuant to M.G.L. c. 21A, § 2, M.G.L. c. 132A, § 11, as amended, St. 1977, c. 933, as amended, and St. 1996, c. 15.

#### 5.02: Purpose

301 CMR 5.00 is promulgated to implement the Self-Help and Urban Self-Help grant programs by establishing uniform grant application, selection procedures and program requirements. Both the Self Help and Urban Self Help grant programs have two separate programs: an annual program in accordance with the grant cycle of 301 CMR 5.05(4); and a rolling program subject to periodic notice of availability as described in 301 CMR 5.05(5).

#### 5.03: Definitions

Division means the Division of Conservation Services in the Executive Office of Environmental Affairs.

Extreme Critical Need means a state of financial hardship where a municipality has an unemployment rate exceeding 10% or where a major business or facility closing has caused devastating economic dislocation and a substantial decrease in the municipality's tax base.

Major State Public Institution means an institution including, but not limited to state and county prisons, mental health facilities, regional solid waste facilities, and federal and state military reservations. Institutions of public higher learning are excluded.

Open Space and Recreation Plan means a bound document containing the following: a summary; statement of purpose including planning process and public participation; community setting; environmental inventory and analysis; inventory of lands of conservation and recreation interest; community goals; analysis of needs; goals and objectives and five-year action plan; maps and letters of comment from the chief municipal officer; planning board and regional planning agency. Guidelines and a workbook for developing plans are available from the Division.

Particular Environmental Sensitivity means Projects located within a state-designated Area of Critical Environmental Concern ("ACEC"); or containing significant plant or animal habitat, a vernal pool, or endangered, threatened or special concern plant or animal species as certified by the Massachusetts Natural Heritage Program office; or, containing known, important archeological or historic resources and on or eligible for inclusion in the State Register of Historic Places. Particular Recreational Importance means, but is not limited to, a project that is the "flagship" or centerpiece of a community's park and recreation system; an acquisition project that significantly addresses an imbalance between the available recreation acreage per capita and the National Recreation and Park Association Standards for such acreage; a coastal or inland swimming facility; and unique recreational facilities such as zoos.

Project means the acquisition, planning, or design of conservation land reimbursed by the Self-Help Program, or the acquisition, development or renovation of parkland reimbursed by the Urban Self-Help Program.

Project Selection System means a project rating system based on a 100-point scale. The Self-Help Project Selection System awards 50 points based on demographic factors of the applicant community and 50 points based on project quality. The Urban Self-Help Project Selection System awards 40 points based on demographic characteristics of the applicant community and 60 points based on project quality. Each program's selection system awards six points for implementation of the community's open space plan and up to ten bonus points if the applicant community has or plans to site a major state public institution or has passed a debt limit override vote of open space purchases in the preceding two years.

Projects of Particular Environmental Sensitivity may be eligible for points in the rating system, and possibly an increase in the reimbursement rate. Applicants claiming eligibility for additional reimbursement for projects of Particular Environmental Sensitivity must

include written comments from any of the following state agencies, as applicable: Coastal Zone Management, the Department of Conservation and Recreation's ACEC program, the Massachusetts Natural Heritage and Endangered Species Program, or the Massachusetts Historical Commission. The Secretary shall develop and may review and modify, at the Secretary's discretion, selection systems for the Self-Help, Rolling Self-Help, Urban Self-Help, and Rolling Urban Self-Help grant programs. The selection systems shall be set forth in Guidance Documents available from the Division.

Regional Project is a recreation facility that serves a population of at least 35,000 people who reside within a 25-mile radius of the facility, has parking for at least 100 cars and adequate comfort stations. Regional Projects generally provide multiple opportunities for picnicking, walking, canoeing, boating, fishing, children's recreation, and swimming. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for regional projects are available from the Division.

Rolling Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Rolling Urban Self-Help Program is a rolling grant program that conforms with the minimum requirements of the Urban Self-Help Program, plus guidelines established by the Secretary, excluding the grant cycle requirement described in 301 CMR 5.05(4).

Secretary means the Secretary of Environmental Affairs or the Secretary's designee.

Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of the allowable costs towards the purchase of land for conservation and passive recreation purposes.

Special Advisor for Environmental Justice Issues means a person so named and designated by the Secretary to review Urban Self-Help grant applications and advise the Secretary on the importance of each application in addressing environmental justice concerns.

Small Town Project is a Project which qualifies only for a maximum of \$50,000 where a community does not meet the population criteria of a city or town of over 35,000 and is not undertaking a Regional or Statewide Project.

Statewide Project is a recreation facility located within a one hour driving time from more than one Metropolitan Statistical Area, accommodates at least 200 vehicles, provides adequate comfort stations, and will also provide for more dispersed or uncommon recreation opportunities such as equestrian trail use, overnight camping, nature center programs, golf, group picnicking, large beach use, boating, skiing, and live animal viewing such as zoos. Any Project located on Nantucket Island, Martha's Vineyard, and the towns of Provincetown, Truro, Wellfleet, Eastham, Orleans, and Chatham is considered statewide regardless of the project scope. The Secretary may waive the vehicle accommodation requirement if direct access to a public transportation route with regularly scheduled hourly service is available at the project site. Guidelines for statewide projects are available from the Division.

Urban Self-Help Program is a grant program that provides reimbursements to municipalities of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

#### 5.04: Eligibility

(1) Planning Requirement. No application will be considered by the Secretary until the Applicant has filed an approved Open Space and Recreation Plan or submits a draft plan with the preliminary application. If a municipality's plan has not been approved by the Secretary at the time of the project selection process, there will be no rating points awarded for plan implementation under the Project Selection System.

(2) Self-Help Program.

(a) Only municipalities with Conservation Commissions duly established pursuant to M.G.L. c. 40, § 8C are eligible to participate in the Self-Help Program.

(b) Self-Help Program grants are available to fund the acquisition of land for conservation purposes, and to plan or design suitable public outdoor facilities for these properties.

(3) Urban Self-Help Program.

(a) Only municipalities with a park, playground, or recreation commission, or any combination thereof, duly established pursuant to M.G.L. c. 45, § 2, and a Conservation Commission duly established pursuant to M.G.L. c. 40, § 8C, are eligible to participate in the Urban Self-Help Program.

(b) Urban Self-Help Program grants are available to fund the acquisition of land for park and outdoor recreation purposes, and for the construction, restoration, or rehabilitation of land for park and outdoor recreation purposes.

(c) The following municipalities are eligible to apply for Urban Self-Help grants:

1. Any city or town of over 35,000 year round inhabitants; or

2. Municipalities with a population of less than 35,000 year-round inhabitants that:

a. propose Statewide or Regional Projects and demonstrate regional or statewide usage to the satisfaction of the Secretary; or

b. propose a Small Town Project.

(d) The Special Advisor for Environmental Justice Issues shall publicize in urban areas the existence of the Urban Self-Help

Program, and publicize, make available and assist municipalities with interpreting the Urban Self-Help Program guidelines.

(4) Affirmative Action and Accessibility. To be eligible for assistance, municipalities must be in compliance with a Civil Rights Review Comment from the Massachusetts Commission Against Discrimination, and Executive Order No. 215, concerning Disbursement of State Development Assistance for Affordable Housing. Municipalities must also show that all parks and recreation facilities are in compliance with the Americans with Disabilities Act (P.L. 101-336), formerly required under Section 504 of the Rehabilitation Act of 1973, P.L. 93-112 (Federal Handicapped Accessibility Guidelines), as amended; and Department of Interior Regulations 43 CFR 17, Subpart B, or show how and when such facilities will be brought into compliance with the above regulations.

(5) Extreme Critical Need. When a municipality can demonstrate that it has extreme critical need or that its project is one of particular recreational importance as defined in 301 CMR 5.03, it may receive up to 10% more reimbursement of the total project cost. No more than five municipalities per year will be awarded this additional funding.

(6) Upon request, the municipality or its authorized representative shall provide all records, books, papers, documents, or other data relating to the Program grant to the Secretary for examination.

(7) Each program participant shall cause work on the Project to proceed within a reasonable period of time after receipt of notification from the Division that funds have been approved and will pursue the Project to completion with reasonable diligence.

#### 5.05: Project Application and Selection

(1) Application Step Procedures. Applications shall be submitted to the Secretary in accordance with the Application Guidelines of the Division, which are available upon request.

(2) Appraisal Reports. Applications for acquisition assistance shall be accompanied by an appraisal report prepared according to the Appraisal Report Guidelines of the Division, which are available upon request.

(3) Project Selection System. In order to distribute limited Self-Help and Urban Self-Help funds among an overwhelming number of applicants, the Secretary has developed a review process called the Project Selection System. The Project Selection System considers a number of demographic, social, environmental, and project quality factors in order to identify those projects which best protect natural resources or recreation amenities where appropriate in communities that have the greatest need for financial assistance and that have made efforts to implement their open space plans in coordination with local planning for future growth. The Project Selection System Guidelines for each grant program are available upon request from the Division.

(4) Self-Help Program and Urban Self-Help Program Grant Cycle.

The annual filing deadline for applications shall be June 1 of each year. The Secretary may alter or extend this deadline provided that public notice of the change is given at least 90 days in advance of the new deadline. Grants shall be made only once in the annual fiscal cycle; however, grants may be adjusted after the award for cause.

(5) Rolling Program Specific Requirements

(a) Rolling Self-Help Program grants must meet all requirements applicable to the Self-Help grant program, excluding the grant cycle requirement as described in 301 CMR 5.05(4).

(b) Rolling Urban Self-Help Program grants must meet all requirements applicable to the Urban Self-Help grant program, excluding the grant cycle requirement as described in 301CMR 5.05(4).

(c) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Self-Help Program.

(d) The Secretary may establish additional guidelines for the Project Selection System of the Rolling Urban Self-Help Program.

(e) The Secretary shall provide notice of availability of funding and the associated filing deadline for any grant funding offered under either the Rolling Urban Self-Help or the Rolling Self-Help Programs. Such notice shall be effective when published either in the Massachusetts Register or the Environmental Monitor.

(f) The Secretary may announce rolling grant rounds and accept applications from time to time and subject to available funding.

#### 5.06: Project Conditions

(1) Off-street parking and land use and management plans may be required at the discretion of the Secretary depending upon the size of the project area, its intended use(s), the nature of the resource(s), and the availability of public transportation and on-site parking.

(2) Additional project conditions may be required by the Secretary to enhance public benefit or protection of natural resources.

(3) Program participants shall provide for fair and equitable treatment of persons and businesses to be displaced as a result of the project, and shall comply with M.G.L. c. 79A, as amended, Titles II and III of the federal Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) where concurrent federal financial assistance is sought or intended for subsequent project phases.

(4) Property acquired or improved with Self-Help Program assistance shall be under the care, custody, and control of the Conservation Commission. Property acquired or improved with Urban Self-Help Program assistance shall be under the care, custody, and control of either the Conservation Commission or the Recreation Commission.

(5) A failure to comply with the conditions of any grant contract may result in the reduction, suspension, or withdrawal of awarded grant funds.

#### 5.07: Project Costs

(1) Each grant program provides reimbursement of up to 90% of allowable costs towards the acquisition of land, and the construction, restoration or rehabilitation of land for park and outdoor recreation purposes. The maximum reimbursement percentage allowed for an approved project based on the municipality's equalized valuation per capita decile rank among all Massachusetts municipalities as determined by the Secretary of Administration and Finance. A municipality's rank, and therefore its percentage of reimbursement potential, may change annually based on its increase or decrease in property valuation and population growth. The Secretary may reduce the maximum reimbursement percentage to allow for a more equitable distribution of limited funds among all municipalities. The annual reimbursement schedules are available from the Division.

(2) Subject to the approval of the Secretary, all reasonable costs associated with acquisition projects shall be eligible for reimbursement. Costs for appraisals, title searches, recording fees, surveys, costs associated with 301 CMR 5.06(3), as well as the actual approved purchase price are deemed to be eligible acquisition project costs. In addition, for Urban Self-Help Projects, the actual approved purchase price, engineering, design, construction, and construction supervision are deemed eligible project costs, however, the Secretary shall retain the right to set a fixed limit on the reimbursement of Project costs. Additional information on reimbursement procedures is available from the Division upon request.

(3) As required by M.G.L. c. 132A, § 11, reimbursement under the Self-Help Program will occur only after the participant has expended an amount equal to the total cost of the project and not until the project has been completed to the satisfaction of the Secretary. Billing procedures and forms are available from the Division.

(4) Federal funding sources such as Community Development Block Grants or Revenue Sharing that are defined by the federal government to be local money may be used to match program funds. Program reimbursements for Urban Self-Help projects may be paid periodically upon request for payments made by a municipality. Billing procedures and forms are available from the Division.

(5) The Division encourages charitable contributions for conservation purposes either in cash or real property. While real property contributions are not reimbursable, cash contributions may be utilized as the municipality's share of the project providing said cash contribution is deposited into a separate municipal account such as authorized under M.G.L. c. 40, § 5, Cl. 51 and is expended therefrom as part of the municipal appropriation for the acquisition or development. Cash contributions returned to the municipality after acquisition are also encouraged. If such contribution is prearranged or likely to occur, the appraisal process should be closely scrutinized, to avoid even the appearance of impropriety. Participants and potential donors should carefully familiarize themselves with M.G.L. c. 268A, the Conflict of Interest law. Donors must not exert undue influence in selling their property and it must be sold at a fair price in order to avoid a conflict of interest.

#### 5.08: Post-completion Requirement

(1) Operation, Maintenance, and Reasonable Use Limitations. Property acquired or developed with Program assistance shall be operated and maintained in accordance with standards and guidelines of the Division. In accordance with the applicable program contract, participants may impose reasonable limits on the type and extent of use of areas and facilities acquired or developed with Program assistance as necessary for maintenance or preservation.

(2) Nondiscrimination. Property acquired or developed with Program assistance will be open to entry and use by all persons who are otherwise eligible regardless of race, color, national origin, sex, sexual preference, age or disability.

(3) Nondiscrimination on the Basis of Residence.

(a) Discrimination on the basis of residence, including preferential reservation, membership or annual permit systems, or user fees is prohibited on the Project site unless this provision is waived by the Secretary.

(b) The Secretary will approve or deny all proposed fee or access limiting systems. Waivers will not be granted which are inconsistent with the Federal Land and Water Conservation Fund Act, P.L. 88-578, Section 6(f)(8), 16 U.S.C. § 4601-4. *et seq.*

#### 5.09: Conversion and Reversion

(1) Conversion. Property acquired or developed with assistance from the Self-Help or Urban Self-Help Program shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, and St. 1977, c. 933. Any property so acquired or developed shall not be wholly or partly converted to other than public outdoor recreation or conservation purposes without the approval of the Secretary. Converted property shall comply with Article 97 of the Massachusetts Constitution and shall be replaced with land of at least equal fair market value and of reasonably equivalent usefulness. The Secretary may disapprove conversion requests or reject proposed property substitutions. Grant contracts, at the discretion of the Secretary, may be subject to specific performance.

(2) Reversion. Property acquired or improved with Program funds authorized by St. 1996, c. 15 shall be retained and used at all times for open space purposes in accordance with M.G.L. c. 132A, § 11, as amended, or St. 1977, c. 933, as amended. In the event that the property ceases to be used, either in whole or in part, for such purposes, all interest in the property shall revert to the Commonwealth, unless the

Secretary demands specific performance of the grant contract.

(a) Owners of property so acquired or improved shall notify the Secretary in writing of any change in use or potential change in use of the property that is inconsistent with said open space purposes. The owner shall have 90 days from the date written notice was received by the Secretary to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert. Upon receipt of written notice, the Secretary may review the circumstances of the property and determine that reversion of the property is not appropriate or essential to the protection of public open space, and find that the provisions of 301 CMR 5.09(1) shall apply.

(b) If the Secretary finds that a property acquired or improved with Program funds has ceased to be used for such open space purposes, the Secretary shall notify the owner of the property in writing of this basis. The owner shall have 90 days from the date written notice was mailed to the owner to present satisfactory evidence acceptable to the Secretary that the basis for reversion has been cured, in which case the property shall not revert.

#### 5.10: Guidance Documents

The Guidelines or Guidance Documents referenced herein are available free of charge to municipalities upon request from the Division.

#### 5.11: Severability

The provisions of 301 CMR 5.00 are severable, and if any provision or application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the enforceability of the remainder of 301 CMR 5.00.

#### REGULATORY AUTHORITY

301 CMR 5.00: M.G.L. c. 21A, § 2; c. 132A, § 11; St. 1977, c. 933; St. 1987, c. 564, §§ 8 and 9; St. 1996, c. 15, § 2.

Formatting Note: 301 CMR 5.00 occupies pages 15 through 22 of 301 CMR EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS. (PAGES 23 THROUGH 42 ARE RESERVED FOR FUTURE USE.)